



DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 310

[Docket ID: DoD-2022-OS-0067]

RIN 0790-AL32

Privacy Act of 1974; Implementation

AGENCY: Office of the Secretary of Defense, Department of Defense (DoD).

ACTION: Direct final rule with request for comments.

SUMMARY: The DoD is amending this part to remove the exemption rules associated with three systems of records notices (SORNs) established for the Department of the Air Force and two SORNs established for the Office of the Secretary of Defense under the Privacy Act of 1974, as amended. Elsewhere in this issue of the *Federal Register*, the DoD is giving concurrent notice of the rescindment of these same five SORNs as part of a notice rescinding numerous other SORNs. The DoD is also amending this part to remove an exemption rule associated with one SORN established for the Marine Corps that was previously rescinded by the DoD. This rule is being published as a direct final rule as the Department does not expect to receive any adverse comments. If such comments are received, this direct final rule will be withdrawn and a proposed rule for comments will be published.

DATES: The rule is effective on [INSERT DATE 70 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER] unless comments are received that would result in a contrary determination. Comments will be accepted on or before [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]. If adverse comment is received, the Department will publish a timely withdrawal of the direct final rule.

ADDRESSES: You may submit comments, identified by docket number, Regulatory Identifier Number (RIN), and title, by any of the following methods.

* Federal eRulemaking Portal: <https://www.regulations.gov>.

Follow the instructions for submitting comments.

* Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Attn: Mailbox 24, Suite 08D09, Alexandria, VA 22350-1700.

Instructions: All submissions received must include the agency name and docket number or RIN for this *Federal Register* document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <https://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Rahwa Keleta, Defense Privacy and Civil Liberties Division, Directorate for Privacy, Civil Liberties and Freedom of Information, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Department of Defense, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350-1700; OSD.DPCLTD@mail.mil; (703) 571-0070.

SUPPLEMENTARY INFORMATION:

Privacy Act Exemption

The Privacy Act permits Federal agencies to exempt eligible records in a system of records from certain provisions of the Act, including the provisions providing individuals with a right to request access to and amendment of their own records and accountings of disclosures of such records. If an agency intends to exempt a particular system of records, it must first go through the rulemaking process to provide public notice and an opportunity to comment on the proposed exemptions. The rule explains

why exemptions are being claimed for the associated system of records. During the rule-making process, the public are invited to comment, which DoD will consider before the issuance of a final rule implementing those exemptions. The final rules implementing exemptions for DoD systems of records are codified in DoD's privacy regulation at 32 CFR part 310.

When a system of records is no longer required to be collected or maintained, the system of records may be discontinued. The notice for that system of record is rescinded in the *Federal Register*, and the records covered by the rescinded system of records are lawfully transferred or disposed of in accordance with applicable requirements. At the time of rescindment or following rescindment for the system of records notice, Federal agencies will seek to also rescind the associated exemption rules within the Code of Federal Regulations.

Direct Final Rulemaking

This rule is being published as a direct final rule as the Department does not expect to receive any significant adverse comments. If such comments are received, this direct final rule will be withdrawn and a proposed rule for comments will be published. If no such comments are received, this direct final rule will become effective ten days after the comment period expires.

For purposes of this rule, a significant adverse comment is one that explains (1) why the rule is inappropriate, including challenges to the rule's underlying premise or approach; or (2) why the direct final rule will be ineffective or unacceptable without a change. In determining whether a significant adverse comment necessitates withdrawal of this direct final rule, the Department will consider whether the comment raises an issue that would have warranted a substantive response had it been submitted in response to a standard notice of a proposed rule. A comment recommending an addition to the rule

will not be considered significant and adverse unless the comment explains how this direct final rule would be ineffective without the addition.

The DoD is amending 32 CFR part 310 by rescinding the following regulation provisions (in their entirety) due to the underlying SORNs being rescinded (concurrently by associated public notice) or having been previously rescinded through public notice:

- 32 CFR 310.14(f)(12), *System identifier and name*. F031 497IG A, Sensitive Compartmented Information Personnel Records.
- 32 CFR 310.14(f)(14) *System identifier and name*. F031 497IG B, Special Security Case Files.
- 32 CFR 310.14(f)(15) *System identifier and name*. F031 AF SP N, Special Security Files.
- 32 CFR 310.29(c)(2), *System identifier and name*. DWHS P28, Personnel Security Operations Files.
- 32 CFR 310.29(c)(8), *System identifier and name*. DWHS P29, Personnel Security, Suitability, and Homeland Security Presidential Directive 12 (HSPD-12) Adjudications.
- 32 CFR 310.17, consisting of paragraph (a)(1), *System identifier and name*. MIN00001, Personnel and Security Eligibility and Access Information System.

Regulatory Analysis

Executive Order 12866, “Regulatory Planning and Review” and Executive Order 13563, “Improving Regulation and Regulatory Review”

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of

harmonizing rules, and of promoting flexibility. It has been determined that this rule is not a significant regulatory action under these Executive orders.

Congressional Review Act

This rule is not a “major rule” as defined by 5 U.S.C. 804(2).

Public Law 96-354, “Regulatory Flexibility Act” (5 U.S.C. Chapter 6)

The Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency certified that this Privacy Act rule does not have significant economic impact on a substantial number of small entities because this rule is concerned only with the administration of Privacy Act systems of records within the DoD.

Public Law 96-511, “Paperwork Reduction Act” (44 U.S.C. Chapter 35)

It has been determined that this rule does not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

Section 202, Public Law 104-4, “Unfunded Mandates Reform Act”

It has been determined that this rule does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more and that it will not significantly or uniquely affect small governments.

Executive Order 13132, “Federalism”

It has been determined that this rule does not have federalism implications. This rule does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments”

Executive Order 13175 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct compliance costs on one or more Indian tribes, preempts tribal law, or affects the distribution of power and responsibilities between the Federal Government and Indian tribes. This rule will not have a substantial effect on Indian tribal governments.

List of Subjects in 32 CFR Part 310

Privacy.

Accordingly, 32 CFR part 310 is amended as follows:

PART 310—[AMENDED]

1. The authority citation for 32 CFR part 310 continues to read as follows:

Authority: 5 U.S.C. 552a.

§ 310.14 [Amended]

2. Section 310.14 is amended by removing and reserving paragraphs (f)(12), (14), and (15).

§ 310.17 [Removed and Reserved]

3. Section 310.17 is removed and reserved.

§ 310.29 [Amended]

4. Section 310.29 is amended by removing and reserving paragraphs (c)(2) and (8).

Dated: June 21, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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